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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

CASE NO. 5:14-cv-5344-BLF

**DECLARATION OF MARK TUNG IN  
SUPPORT OF CISCO'S  
ADMINISTRATIVE MOTION TO FILE  
UNDER SEAL CONFIDENTIAL  
INFORMATION IN OPPOSITION TO  
ARISTA'S MOTION TO AMEND  
SCHEDULING ORDER OR,  
ALTERNATIVELY, TO STAY PATENT  
CLAIMS PENDING *INTER PARTES*  
REVIEW**

**DEMAND FOR JURY TRIAL**

**DECLARATION OF MARK TUNG**

I, Mark Tung, declare as follows:

1. I am an attorney licensed to practice in the State of California and am admitted to practice before this Court. I am of counsel with the law firm Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Plaintiff Cisco Systems, Inc. (“Cisco”). I have personal knowledge of the matters set forth in this Declaration, and if called as a witness I would testify competently to those matters.

2. I make this declaration in support of Cisco’s Administrative Motion to File Under Seal Confidential Information in Opposition to Arista’s Motion to Amend Scheduling Order or, Alternatively, to Stay Patent Claims Pending *Inter Partes* Review in connection with Cisco’s Opposition to Arista’s Motion to Amend Scheduling Order or, Alternatively, to Stay Patent Claims Pending *Inter Partes* Review (“Cisco’s Brief”).

3. Cisco’s Brief is non-dispositive. In this context, materials may be sealed so long as the party seeking sealing makes a “particularized showing” under the “good cause” standard of Federal Rule of Civil Procedure 26(c). *Kamkana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting *Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003)). In addition, Civil Local Rule 79-5 requires that a party seeking sealing “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (i.e., is “sealable”). Civil L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

4. Pursuant to Civil L.R. 79-5(e), Cisco requests to seal the documents identified herein only because the information sought to be sealed has been directly designated by Defendant Arista Networks, Inc. (“Arista”) as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the Protective Order (Dkt. 53):

Document	Portions to Be Filed Under Seal
Cisco’s Opposition to Arista’s Motion to Amend Scheduling Order or, Alternatively, to Stay Patent Claims Pending	As highlighted in the version filed herewith, portions of pages: 5 and 6

<i>Inter Partes</i> Review	
Exhibit 6 to the Declaration of Mark Tung in Support of Cisco's Opposition to Arista's Motion to Amend Scheduling Order or, Alternatively, to Stay Patent Claims Pending <i>Inter Partes</i> Review ("Exhibit 6")	Entire.
Exhibit 8 to the Declaration of Mark Tung in Support of Cisco's Opposition to Arista's Motion to Amend Scheduling Order or, Alternatively, to Stay Patent Claims Pending <i>Inter Partes</i> Review ("Exhibit 8")	Entire.

5. Cisco's Brief contains quotations from documents produced by Arista. Those documents are included as Exhibits 6 and 8 to the Declaration of Mark Tung in Support of Cisco's Opposition to Arista's Motion to Amend Scheduling Order or, Alternatively, to Stay Patent Claims Pending *Inter Partes* Review. Arista designated these documents as "Confidential Business Information" in ITC Investigation Nos. 337-TA-944 and 337-TA-945. Under the Stipulated Protective Order governing this litigation, Dkt. 53 at 6 fn. 1, these documents are deemed to have been produced in this case as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." Accordingly, Cisco has narrowly redacted only those portions of its Brief containing information so designated by Arista. Specifically, Cisco has redacted the quotations from Arista's documents in Cisco's brief, and the documents themselves in the accompanying declaration. Redacted and unredacted highlighted versions of Cisco's Brief are attached hereto.

6. A fully redacted version of Exhibit 6 and fully and partially redacted versions of Exhibit 8 are also attached hereto. Cisco believes that for Exhibit 8 only the information partially redacted by Cisco from Exhibit 8 in the version filed under seal truly merits protection. However, Cisco has filed fully redacted versions of Exhibits 6 and 8 and requests that Exhibits 6 and 8 be

1 sealed in their entirety only because Arista has designated the documents comprising the exhibits  
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and to give Arista an opportunity  
3 to assert that Exhibits 6 and 8 should be redacted in their entirety in a declaration pursuant to Civil  
4 Local Rule 79-5(e).

5 7. Cisco will serve a copy of this declaration on Arista the same day it is filed. Cisco  
6 expects that Arista will file the required supporting declaration in accordance with Civil Local  
7 Rule 79-5(e), as necessary, to confirm that the information contained in the above-referenced  
8 documents should be sealed.

9 I declare under penalty of perjury under the laws of the State of California that the  
10 foregoing is true and correct, and that this declaration was executed in Redwood Shores,  
11 California, on November 18, 2015.

12  
13 /s/ Mark Tung

14 Mark Tung (Bar No. 245782)  
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**SIGNATURE ATTESTATION**

Pursuant to Civ. L.R. 5-1(i)(3), the undersigned hereby attests under penalty of perjury that concurrence in the filing of this document has been obtained from the signatory indicated by the “conformed” signature (/s/) of registered ECF User Mark Tung (Bar No. 245782).

/s/ John M. Neukom  
John M. Neukom (Bar No. 275887)